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1 first for me as well. We're going to have Skype testimony here
2 today. So electronic age has met the Texas legislature as well.
3 Can you tell me about your pre-clearance process.

4 MR. KEMP: Yes. We -- that was another section I
5 didn't quite get to. We had pre-clearance on the original
6 legislation after it was signed in about two months. The rules
7 and regulations forms, applications, et cetera that implemented
8 the legislation was pre-cleared in about eight days. And then,
9 of course, we had numerous lawsuits that we have won every one
10 of them. So it really didn't take us too long to get
11 pre-cleared.

12 REPRESENTATIVE HARLESS: So how long did you
13 spend in litigation?

14 MR. KEMP: Well, we're still in litigation. And,
15 you know, our photo ID law has withstood scrutiny in the Georgia
16 Supreme Court and the 11th Circuit Court of Appeals in the Lake
17 Purdue case which was decided in 2007.

18 There was another case, Common Cause versus
19 Phillips that was decided in 2009. The 11th circuit found that
20 the burden imposed by the requirement of photo ID is outweighed
21 by Georgia's interest in safeguarding its right to vote. Also,
22 there has not been one single person that has been found that
23 could not vote because they did not have a photo ID or because
24 of the law.

25 And then right now the democratic party of



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1 Georgia in Georgia versus -- the Democratic Party of Georgia
2 versus Purdue is currently pending in the Georgia Supreme Court.
3 In April of 2010 the lower court dismissed the lawsuit of the
4 Democratic Party of Georgia on the grounds that the Georgia
5 photo ID law did not violate the Georgia Constitution.

6 We are hopeful that this will be the last court
7 case for our photo ID legislation.

8 REPRESENTATIVE HARLESS: And the U.S. Supreme
9 Court refused to hear the case?

10 MR. KEMP: That's correct.

11 REPRESENTATIVE HARLESS: Can you tell me, we were
12 talking about the money you spent, the PR and the media and the
13 training, the \$1.6 million. Did you have the availability of
14 HAVA funds, Help America Vote funds, to help offset some of
15 those costs?

16 MR. KEMP: I'm not exactly sure where we were on
17 the time at our HAVA funds. We used State funds for this
18 outreach. However, I will say that if we were in today's
19 economy, we would probably be looking at using HAVA funds.

20 REPRESENTATIVE HARLESS: Thank you so much.

21 MR. KEMP: You're welcome.

22 CHAIRMAN BONNEN: Represent Gutierrez has
23 questions.

24 REPRESENTATIVE GUTIERREZ: Thank you, Mr.
25 Chairman. Well, I have a number of questions, and I don't want



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1 to belabor the point on the whole curing elections, but did you
2 find that there was a tremendous amount of voter fraud or voter
3 impersonation, I should say, going on?

4 MR. KEMP: I don't know that there's any real way
5 you can tell.

6 REPRESENTATIVE GUTIERREZ: Did you have hoards of
7 Mexicans going over there to vote?

8 MR. KEMP: I'm sorry?

9 REPRESENTATIVE GUTIERREZ: Did you have hoards of
10 Mexicans? We had heard earlier that we had hoards of Mexicans
11 voting. Did you have hoards of Mexicans voting?

12 MR. KEMP: Well, I didn't see that.

13 REPRESENTATIVE GUTIERREZ: So was there any
14 investigation by the government, your attorney general or
15 anything prior?

16 MR. KEMP: Well, I serve as Chairman of the State
17 Elections Board, and we have had non-citizens voting in Georgia.
18 We've got non-citizens on our voter registration rolls now.
19 We've been fighting the Justice Department for the last couple
20 of years about that and have won our first case with them and
21 we're in another one with them right now. But WSB, a big
22 Atlanta TV station, did a big investigation that highlighted
23 hundreds of non-citizens that are on our rolls. And we have had
24 non-citizens voting in our elections.

25 REPRESENTATIVE GUTIERREZ: And you say there's



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1 some lawsuit out there that suggests that?

2 MR. KEMP: No. We have a lawsuit to check -- we
3 passed a state law in 2009 to check citizenship before we
4 register someone to vote, and we're actually suing to get
5 pre-clearance.

6 REPRESENTATIVE GUTIERREZ: And what's the name of
7 that lawsuit?

8 MR. KEMP: I guess it could be Kemp versus
9 Holder. We can get you the information on that if you'd like
10 it, Representative.

11 REPRESENTATIVE GUTIERREZ: I appreciate it. But
12 you haven't witnessed hoards of Mexicans voting in Georgia; is
13 that your testimony?

14 MR. KEMP: No, I haven't.

15 REPRESENTATIVE GUTIERREZ: I do want to commend
16 you. You allow a few more ways of allowing people to vote.
17 You've got an expired driver's license is sufficient, right?

18 MR. KEMP: That's correct in Georgia.

19 REPRESENTATIVE GUTIERREZ: So if someone's not a
20 very good driver, gets their license suspended, and they still
21 have it, that still passes?

22 MR. KEMP: Yes. And just like my stepfather, who
23 can't see very well now and doesn't drive, his driver's license
24 expired. He can still use that when he goes to vote.

25 REPRESENTATIVE GUTIERREZ: That's a good point



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1 because sometimes what happens to some of our senior citizens is
2 that they get their privileges revoked or they just choose to
3 make the right decision and they can't see as well, like my dad
4 can't see as well anymore. So we have myself or other members
5 of my family drive him around at times or he just simply doesn't
6 drive. So we have a lot of seniors that simply choose not to go
7 out and renew it for whatever, convenience, and they keep their
8 old driver's license. So an expired driver's license is okay in
9 Georgia.

10 MR. KEMP: It is okay in Georgia. Now, we would
11 also, if they did not have that, would give them a free ID.

12 REPRESENTATIVE GUTIERREZ: Very good. And you
13 mentioned six things. So I've got the driver's license, expired
14 driver's license, the military ID, the tribal ID, any valid
15 government ID that would show that I'm an employee of the State
16 of Texas, if I were an employee of the State of Georgia. I
17 guess that would work, right.

18 MR. KEMP: That's correct.

19 REPRESENTATIVE GUTIERREZ: A U.S. passport or a
20 valid U.S. passport?

21 MR. KEMP: Yes, sir.

22 REPRESENTATIVE GUTIERREZ: And you mentioned
23 something about a county registrar. Would that be my --

24 MR. KEMP: Any county, municipality, board or
25 authority or other entity of this state.



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1 REPRESENTATIVE GUTIERREZ: Okay. And what is
2 that, just an ID from any county --

3 MR. KEMP: Like if you were a county manager for
4 the Clark County and you had a photo ID, that would work.

5 REPRESENTATIVE GUTIERREZ: So you allow for more
6 options. I like the expired piece. That's good.

7 MR. KEMP: I will tell you this, that when our
8 legislation passed, everybody thought it was draconian and way
9 over the top. And now we have a lot of folks that point to our
10 legislation because some other states are trying to pass things
11 that are much tougher than what we did.

12 REPRESENTATIVE GUTIERREZ: Do y'all exempt people
13 over 70 years of age from having to have an ID at all?

14 MR. KEMP: I'm not sure about that. I'd have to
15 check.

16 REPRESENTATIVE GUTIERREZ: This legislation, we
17 do actually. So anyone over 70 is not required to have the ID.
18 So that's a nice difference. And I think I read, maybe it was a
19 prior senate bill, it was April prior to 2012. So that may not
20 be the case and that remains to be seen in some point for
21 seniors that are going to be 70, let's say ten years from now.

22 And so you spent all this money, about 1.6
23 million. And that last comment actually brings to mind
24 something else. I mean, you would agree with me that there's
25 kind of a continual education that needs to happen for election



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1 after election.

2 MR. KEMP: Well, there's continual education
3 about a lot of the laws that we pass and I'm sure that are still
4 getting passed today.

5 REPRESENTATIVE GUTIERREZ: But certainly not to
6 the extent that you spent \$842,000 in an ad campaign in the
7 beginning, correct?

8 MR. KEMP: I would agree with that.

9 REPRESENTATIVE GUTIERREZ: You're not spending
10 that kind of money now, are you?

11 MR. KEMP: No, sir. We're actually saving some
12 money now because of the photo ID requirement. We've put a
13 barcode scanner in at least one in all of our precincts in
14 Georgia. So now when people come to the polls they can actually
15 scan the driver's license and will be able to on the photo ID,
16 pulls their name up on the express poll which speeds the process
17 up for our voters, plus makes it quicker which allows the
18 counties to have less people in there. And counties are also
19 using other equipment that actually prints the forms outs for
20 early in-person voting, which is speeding the time up. So, you
21 know, now, because we've done this, we're starting to see some
22 savings, mostly at the county level.

23 REPRESENTATIVE GUTIERREZ: You mention something
24 about an annual cost of \$70,000 in that contract. Is that
25 continuing beyond the four or five-year period in \$589,000 cost?



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1 MR. KEMP: The annual cost in training was from
2 2008 to 2010, was 170. But we do annual training regardless.
3 I'm sure, you know, most states or counties do that. I mean, we
4 have two different sessions every year with our registrars and
5 our elections officials where we do training. We've got an
6 E-learn electronic web site type training system. So that
7 continually goes on in Georgia.

8 REPRESENTATIVE GUTIERREZ: And I'm wrapping this
9 up, Mr. Chairman.

10 CHAIRMAN BONNEN: Sure.

11 REPRESENTATIVE GUTIERREZ: One of the big
12 questions that I had was I was concerned. You gave us some '04
13 numbers and '08 numbers to show an increase in Latino and
14 African-American voting and they were certainly very
15 substantial. But you would agree with me that was in large part
16 because of a monumental election in our country with President
17 Obama being elected. Wouldn't you agree with that statement?

18 MR. KEMP: I probably would agree with that.

19 REPRESENTATIVE GUTIERREZ: So I didn't hear
20 numbers from '08 to 2010 as far as Latino and African-American
21 voters.

22 MR. KEMP: We were trying to be consistent in the
23 election that we were trying to compare presidential to a
24 presidential election.

25 REPRESENTATIVE GUTIERREZ: All right.



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1 MR. KEMP: We can get you those other numbers, if
2 you'd like.

3 REPRESENTATIVE GUTIERREZ: But you had some other
4 2010 numbers, but we don't have the African-American, Latino
5 turnout for --

6 MR. KEMP: Right. Those elections we're talking
7 about the provisional ballots.

8 REPRESENTATIVE GUTIERREZ: Is it safe to argue
9 that those numbers would be substantially less than certainly
10 the 2008?

11 MR. KEMP: Well, I mean, I would hate to commit
12 to that answer, not seeing the figures. I mean, obviously 2008
13 was a historic day for African-Americans and --

14 REPRESENTATIVE GUTIERREZ: For the country?

15 MR. KEMP: Yeah, absolutely, and in Georgia. And
16 we had huge turnout, which was great. But I think, you know, in
17 2010, even though our vote total is down, which it always is for
18 gubernatorial races, in my belief we had a pretty strong
19 African-American turnout as well.

20 CHAIRMAN BONNEN: Mr. Secretary, I would
21 appreciate it -- Representative Gutierrez, if you would agree, I
22 think what would be valuable is if you would show us the vote
23 totals from '06 comparative to '10 because I think it is
24 reasonable to compare presidential to presidential and
25 gubernatorial to gubernatorial. Not to send you back to Georgia



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1 with homework from Texas, but we would appreciate it.

2 MR. KEMP: Can we bill you for that? No, I'm
3 just kidding.

4 CHAIRMAN BONNEN: Don't send the collectors over.

5 MR. KEMP: All right. You want general election?

6 CHAIRMAN BONNEN: If we could see the comparisons
7 of '06 to '10, the gubernatorial '06 election to the
8 gubernatorial 2010 election.

9 REPRESENTATIVE GUTIERREZ: Thank you for that
10 recommendation. I think that that would be some good numbers.

11 CHAIRMAN BONNEN: And we've got all the time you
12 need. I didn't want to cut you off. You keep asking the
13 questions you have.

14 REPRESENTATIVE GUTIERREZ: My last question. Are
15 you enjoying your brief stay in Austin?

16 MR. KEMP: Well, I tell you, Representative, I
17 wish it had been a little bit longer. It was going to be brief
18 regardless. But I would have loved to have come in last night
19 and stay in Downtown Austin and bought a meal here. But
20 unfortunately we had a bad storm that came through. So I got to
21 fly here today and I'm leaving this afternoon. My wife and I
22 were actually here before Christmas with some other Secretary of
23 States and had a good conference and certainly a great stay in a
24 great state and a beautiful city.

25 REPRESENTATIVE GUTIERREZ: Well, come to San



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1 Antonio. We have the best basketball team in the nation.
2 You're invited.

3 CHAIRMAN BONNEN: Real quick, little
4 housekeeping. Let the record show Represent Taylor is present.
5 Representative Hilderbran is present. Vice Chair Veasey is
6 present. And now Representative Aliseda has some questions and
7 then we'll come to Vice Chairman Veasey for his questions.

8 REPRESENTATIVE ALISEDA: Mr. Kemp, what I took
9 from your testimony is that you, like we, were experienced
10 naysayers, that this was going to be something that would affect
11 minorities well into the future; is that correct?

12 MR. KEMP: Well, I wasn't a naysayer. I felt
13 like the legislation made good common sense to me. But in the
14 district that I was in, there was a lot of naysayers in my
15 district that voiced their concerns.

16 REPRESENTATIVE ALISEDA: And you were able to
17 show statistically, though, that those dire predictions did not
18 come as was said; is that correct?

19 MR. KEMP: Well, and I think when I looked at
20 these numbers as we were preparing them, I was very encouraged
21 by them. I thought the numbers speak for themselves, that we've
22 had minority -- increase in minority in-person voting. And
23 we've had -- I mean, even with our photo ID legislation, we
24 have, on average, over 90 percent of our population that votes
25 in person, and that's pretty amazing to me.



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1 REPRESENTATIVE ALISEDA: Have you seen a report
2 prepared by the Heritage Foundation regarding data analysis and
3 voter ID laws?

4 MR. KEMP: I think I have read that report.

5 REPRESENTATIVE ALISEDA: Do we have that as part
6 of the record, Chairman Bonnen?

7 CHAIRMAN BONNEN: I have a copy. There is no
8 official record.

9 REPRESENTATIVE ALISEDA: There is no official
10 record. Okay. I have no further questions.

11 CHAIRMAN BONNEN: This is not a legal proceeding
12 so there is not an official record. We're not the Senate. They
13 don't like us to pretend that we are.

14 Vice Chairman Veasey has questions, Mr.
15 Secretary.

16 VICE CHAIRMAN VEASEY: And one of tings that I
17 remember when the whole voter ID controversy started in Georgia
18 I know that one of the columns that Cynthia Tucker wrote, who
19 was a columnist for Atlanta Journal, the African-American
20 columnist that is one of the liberal columnists, she had
21 mentioned that, you know, that if there was a slow
22 implementation of the bill that then you could -- and I think
23 that even in the Carter Baker report they even talk about that,
24 instead of trying to immediately, you know, put something on
25 someone's back, just giving them a chance to understand the law.



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1 And it looks like from the questions that Representative
2 Gutierrez was asking you a second ago that y'all -- sound like
3 y'all kind of made some changes that would allow people to
4 understand what was going on and give people more opportunities
5 to exercise their suffrage.

6 MR. KEMP: Well, I will tell you this. Ms.
7 Tucker and I don't agree a whole lot politically. And I think
8 the way Georgia implemented the law was very reasonable from the
9 timeframe. And I think just when you take the politics out of
10 this, I think it's a very simple argument for our citizens.
11 Most of them already have a photo ID. We can't get in
12 government buildings without a photo ID. We can't write a
13 check. I can't get on the airplane to go home without a photo
14 ID. That doesn't mean that there aren't folks out there that
15 don't have them and need our assistance to get a photo ID.

16 VICE CHAIRMAN VEASEY: There are other ways that
17 people can -- there are exceptions to everything, even getting
18 on a plane. You need to have a photo ID to get on a plane, but
19 there are other ways that you can -- it may be more burdensome,
20 but there are other ways you can get on a plane without having a
21 photo ID.

22 MR. KEMP: And we have other ways that people can
23 vote in Georgia. You can vote absentee without a photo ID. And
24 I will submit a copy of these remarks for you that talk about
25 how you can get a photo ID in Georgia. And it is very, quote,



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1 liberal in the ways that you can get a photo ID. I mean,
2 there's just a multitude of documents that you can show that
3 will allow you to get a photo ID so that you can be able to vote
4 in Georgia.

5 VICE CHAIRMAN VEASEY: Have you heard -- one
6 other thing that I thought was interesting that you talked
7 about, the 2010 election results because you thought that
8 perhaps that the African-American numbers might have gone up
9 during the 2010 election. Have you heard that maybe other
10 states want to -- including our state, maybe want to pass other
11 more stringent laws because they still think that people are
12 still casting these illegal ballots and that the Georgia law did
13 not go far enough so other states need to be tougher than the
14 Georgia law? Have you heard that in political circles?

15 MR. KEMP: Not in political circles. In reading
16 media regards, press clips, there's certainly a lot of other
17 states around the country who are trying to implement photo ID
18 legislation to I think further secure their elections. I don't
19 think the reasoning behind that is to try to keep any certain
20 group from voting. That certainly was not our intent in
21 Georgia. And I think you can see from numbers in in-person
22 voting that that hasn't proved to be true.

23 VICE CHAIRMAN VEASEY: So are you happy with your
24 law? Are you happy with the bill that was passed?

25 MR. KEMP: Yes. I'm happy with the legislation



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1 that we passed in Georgia. I'm happy with the implementation
2 that we've had. And we continue to work hard, you know, every
3 year at making citizens aware that they need a photo ID. If
4 they don't have one, we'll give them a free one. And we'll
5 continue to do that as long as this is in place.

6 And to just address your one point about the
7 African-American vote in 2010, I don't believe I said that the
8 turnout had increased. I believe I said I think that there was
9 still a very strong African-American turnout.

10 VICE CHAIRMAN VEASEY: It will be interesting to
11 analyze the numbers, but that was sort of a concern for me when
12 I saw the Senate debating the bill and I saw this was going to
13 be a much more stringent bill than that one that Mary Denny had
14 carried. That was a representative that's no longer here, and
15 the one that Betty Brown had carried before. I was concerned
16 about that because what I don't want to get into is, okay, we
17 didn't disenfranchise enough African-Americans in Georgia so we
18 need to come up with a more strict law here.

19 MR. KEMP: I don't think we disenfranchised
20 anyone.

21 VICE CHAIRMAN VEASEY: We didn't disenfranchise
22 enough people that ride the bus or we didn't disenfranchise
23 enough people that carry Medicaid cards or whatever. So we need
24 to come up with even something more stringent so we can get that
25 1 to 3 percent and, you know, skim that off the top so that we



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1 can win close elections. I don't want that to happen.

2 MR. KEMP: Well, Representative, let me just make
3 sure that this committee is clear that we have not
4 disenfranchised anyone in Georgia.

5 VICE CHAIRMAN VEASEY: Sounds like you're giving
6 people a chance to --

7 MR. KEMP: And I'll say we have not tried to
8 disenfranchise especially any minority group. Up until this
9 year we actually had two African-Americans that had continually
10 won statewide races in Georgia.

11 VICE CHAIRMAN VEASEY: Thank you.

12 MR. KEMP: Yes, sir.

13 CHAIRMAN BONNEN: Any other questions, members?
14 Appreciate you taking the time to come to Texas and give us your
15 testimony today. It's very helpful. And I think, for the
16 record, I don't think anyone in Texas has come out and said they
17 want to disenfranchise more or greater numbers of voters. So
18 thank you for being here.

19 MR. KEMP: Well, thank you, Mr. Chairman. If you
20 don't mind, I'll give you a copy of my remarks as well just so
21 you'll have the numbers then we'll get you the numbers on the
22 other you requested.

23 CHAIRMAN BONNEN: Thank you very much for your
24 help. The Chair will now call another expert witness, Luis
25 Figueroa, Mexican American Defense Education Fund MALDEF, here



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1 to testify against committee substitute to Senate Bill 14. And
2 he will be testifying. Thank you, Luis.

3 MR. FIGUEROA: Thank you, Chairman. My name is
4 Luis Figueroa.

5 CHAIRMAN BONNEN: And you have ten minutes,
6 remember.

7 MR. FIGUEROA: Yes. My name is Luis Figueroa.
8 I'm the legislative staff attorney with the Mexican American
9 Legal Defense and Educational Fund. I thank you for this
10 opportunity to provide invited testimony. The one message that
11 I would like to get out is the idea of voter ID is oftentimes
12 described as a clear yes and no question of either you have an
13 ID or you don't have an ID. And actually, most of these bills,
14 whether you go from Georgia, Indiana, Texas, Michigan, it's on a
15 continuum of what documents you need and what safeguards are in
16 place to implement the identification requirements.

17 And so the key is not so much, is there a voter
18 ID requirement or not. The key is finding the right balance of
19 security versus access. And we believe that SB14 unbalances
20 that spectrum to the point that we are too focussed on
21 preventing one single type of fraud and potentially taking away
22 access on the other side of the pendulum.

23 There have been numerous studies talking about
24 concerns about additional ID requirements, and it's difficult to
25 evaluate one election from the next when you look at voter



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1 turnout, but some experts have tried to do their best. And one
2 of them was Barreto Nuno Sanchez in a report called Voter ID
3 Requirements and the Disenfranchisement of Latino, Black and
4 Asian Voters. And they found that naturalized citizens and
5 minority voters are significantly less likely to provide
6 multiple forms of identification.

7 They also found that minority voters were
8 consistently less likely to have each form of identification and
9 that the data reflects identification trends of actual voters,
10 not just adult citizens. The findings go farther to suggest
11 that voter identification laws could immediately disenfranchise
12 many Latino, Asian and African-American citizens.

13 The Rutgers study, which was produced by
14 Vilsadian Anderson stated that the predicted probability that
15 Hispanics would vote in a state that required non-voter
16 identification was about 10 percent lower than in states where
17 Hispanic voters gave their names.

18 The Wisconsin study, which was a study of how
19 many people had the documents, found that less than half, 40
20 percent of Milwaukee County African-American adults and 43
21 percent of Hispanic adults had valid driver's licenses compared
22 to 85 percent of white adults in the balance of the state.

23 The Brandon Center came back with a report and
24 said that citizens with comparative low incomes are less likely
25 to possess documentation proving their citizenship and as many



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1 as 11 percent of United States citizens, more than 21 million
2 individuals, do not have government issued photo identification.

3 They went on to state that 25 percent of
4 African-American voting age citizens have no current government
5 issued photo ID compared to 8 percent of white voting age
6 citizens. And 10 percent of voting age citizens who have a
7 current ID do not have a photo ID with both their current
8 address and their current legal name.

9 So obviously, there's numerous studies and
10 there's different ways of evaluating turnout and impact and how
11 many identification. But we believe that the data that we've
12 seen has had an impact on Latino and African-Americans.

13 The one thing we point out is that Texas does
14 have a voter ID requirement on books now. You are required to
15 bring either a voter registration certificate, a picture ID, or
16 a non-picture ID from a contained list of documents.

17 So the question is not whether we're going to
18 implement a voter ID, but what the new documentation requirement
19 and how restrictive we're going to make it and how many
20 safeguards we're going to put in place. We know that there are
21 294,000 people who registered from 2006 to 2010, who registered
22 with a Social Security number and not a driver's license, and
23 that there are 34,506 who registered without a Social Security
24 number or a driver's license. We also know that there are 2.1
25 million Texas registered voters who only are listed by their



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1 Social Security number and that there are 690,000 voters on the
2 roles who have neither a Social Security number or a driver's
3 license in the voter database.

4 So we have the potential for disenfranchisement.
5 Those are just based on the numbers of people who are currently
6 registered. We also know that what isn't tracked by any studies
7 or tracked by the current number of registered voters are the
8 people who are low income, who use public transportation and
9 move in and out and don't have a correct address on their
10 driver's license.

11 We know that there will be potential victims of
12 identity theft who don't have their identifications on them at
13 the time, natural disaster victims, recent arrivals to Texas,
14 and, of course, our Native American population.

15 In fact, in Arizona, which was the case that
16 MALDEF litigated on identification requirements, Maricopa
17 County, 2 percent of voters were unaware of the new requirements
18 on election day. In Texas that would amount to about 161,000
19 potential ballots cast in the presidential election in '08.

20 What we also found in Maricopa, which was also
21 confirmed by what we heard in Georgia, is that when you offer
22 conditional provisional ballots or an opportunity for people to
23 come back and bring that identification or cure their ballots,
24 people by in large do not come back. And we heard the numbers
25 from Georgia in the previous testimony. In Maricopa County 739



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1 were not counted of the conditional provisional ballots, and 144
2 of those were Hispanic.

3 We found in Maricopa County, we have found it in
4 Georgia, we found it in pretty much across the state, that
5 people don't come back to cure provisional ballots, regardless
6 the number of days. But certainly if you make it a small number
7 of days and you don't include a weekend in there, there aren't a
8 lot of opportunities for people to come back.

9 And so what we wanted to state is since we are
10 having a very restrictive requirement in front of us in SB14,
11 more restrictive than SB362 last session, more restrictive than
12 the Indiana voter ID law, more restrictive than the Georgia ID
13 law, more restrictive than the Arizona ID law, that we are
14 potentially risking violations of -- potential litigation and
15 violations of the law.

16 The laws that potentially come into play
17 including the 14th amendment, undue burdens. This was the
18 challenge that Indiana was challenged under. It wasn't a Voting
19 Rights claim. It was a 14th Amendment undue burdens claim. And
20 the thing that the Courts looks at was the balancing test. They
21 looked at the security concerns versus the access concerns. And
22 they looked at whether or not there were provisions to provide
23 exceptions for people like the elderly. For instance, the
24 elderly were allowed to bring a Medicaid card to cure ballots.
25 They looked at the rural nature of the state. And so in Texas



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1 we might have more concerns or bigger problems since we have a
2 more restrictive list than Indiana. We only allow for four
3 documents. We have a shorter cure period. We have a bigger
4 state, more rural areas and a lot more minorities.

5 The other laws that come into play are the Voting
6 Rights Act, Section 5 and Section 2. So Texas is a Section 5
7 state so we'll have to submit it for pre-clearance. We know
8 that Latinos are very mobile in Texas with not a lot of home
9 ownership. We know that Latinos also -- we have many citizens
10 in Texas that are derivative citizens, meaning that they are
11 citizens because their parents were citizens. They might have
12 been born abroad. They may not have a birth certificate. They
13 may not have the documents that are necessary under the DPS
14 rules to get a driver's license.

15 And then we also know we have Section 2, which is
16 the dilutive potential on African-Americans and Latinos. That's
17 a similar analysis to Section 5 except we look at the dilutive
18 effect rather than the retrogressive effect.

19 And then the one that I would say has been the
20 least successful in challenges, and that's the poll tax, which
21 is the cost of obtaining the ID. It costs hundreds of dollars
22 to get a naturalization certificate. It costs over \$30 to get a
23 birth certificate. It costs money to get a passport. And, of
24 course, it costs time and money to get these documents.

25 At the end of the day we're talking about trying



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1 to find the right balance. We believe the right balance
2 includes one form of picture identification or two forms of
3 non-photo identification, a signature affidavit attesting to
4 name, address and eligibility, similar to the way Michigan and
5 Florida are doing it. Those have worked very well in
6 conservative states as well as in states with a lot of
7 minorities. And if you wanted to improve access, you could add
8 same-day election voter registration with an ID requirement.
9 You could do more training and provide for more funds for
10 education. And, of course, you could offer free IDs, which this
11 bill does provide. Those are some of the options you could look
12 at so you could protect against the fraud, but also protect
13 against the access.

14 We know there's a lot of different types of fraud
15 in Texas. In fact, we have received the flyer from Tarrant
16 County where a voter was submitted flyers and there were flyers
17 all over the community where voters were told to vote on the
18 wrong day. This is the type of fraud that isn't addressed by
19 this bill. We know there are other types of fraud that aren't
20 addressed by this bill. So we believe in looking at the
21 problems wholistically, addressing the fraud and the access,
22 finding the right balance and insuring that we don't go too far
23 in that pendulum that's going to lead to litigation, higher
24 costs, and potential disenfranchisement of many voters,
25 including Latinos and African-Americans. And I thank you for



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1 this opportunity and I hope that we can have further
2 conversations about this.

3 CHAIRMAN BONNEN: Okay. Thank you. Vice Chair
4 Veasey has questions.

5 VICE CHAIRMAN VEASEY: And that's the -- what I
6 was trying to point out earlier when I was talking about the
7 Secretary of State from Georgia, what I don't want to see here,
8 because no one -- even if someone is for disenfranchising
9 people, no one is going to admit that. I mean, people have
10 definitely learned from mistakes in the past. And I don't want
11 to think that anyone -- I think that that's horrible. I don't
12 want to think that anyone wants to disenfranchise anybody. I
13 hope that that's a chapter of our history that we have left
14 behind 40 year ago.

15 MR. FIGUEROA: That's right.

16 VICE CHAIRMAN VEASEY: I don't want our country
17 to ever have to revisit that. I don't want us to ever have to,
18 you know, go and march on the streets or, you know, do any of
19 those things that people had to do 40 years ago.

20 MR. FIGUEROA: All the reasons why we are a
21 Section 5 state.

22 VICE CHAIRMAN VEASEY: I think that would be
23 absolutely horrible. But I mean, you talked about the same-day
24 voter registration. And, you know, whatever that comes up, I
25 can't understand -- and I don't know if you have an opinion on



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1 this. I can't understand why people immediately say no,
2 absolutely not, no way. So when I hear that and, you know, when
3 MALDEF or NAACP or anyone hears that, you know, I have concerns
4 because it almost seems like that instead of trying to reach
5 some sort of compromise or instead of that -- no, that's not the
6 result that we're trying to yield here and same-day voter
7 registration is completely off the table. Of course, no one
8 would ever admit that. No one would ever admit that. People
9 have learned from the past.

10 So help me out and let me know, does MALDEF have
11 any concerns about the resistance to cooperate or try to reach
12 middle ground, because I don't think that any of us are, you
13 know, completely opposed to making changes --

14 MR. FIGUEROA: Right.

15 VICE CHAIRMAN VEASEY: -- to the way that we vote
16 in the state. I want -- just like all of the Republicans or
17 people that are here that are concerned about the integrity of
18 the election process, I want there to be a fair election process
19 also.

20 MR. FIGUEROA: Absolutely. And we've had some
21 great conversations with political operatives that work on the
22 Republican side and on the Democrat side, and they all talk
23 about different types of fraud that occurs, whether it's mail-in
24 fraud or intimidation. And there are ways that we can address
25 that as well. But this bill is only focused on that one single



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1 type of voter impersonation fraud which we've seen the least
2 amount of evidence for. Now -- and when we have seen it, it's
3 been a lot of times with people using a photo ID as opposed to
4 using a voter registration certificate, which this bill wouldn't
5 address this either.

6 So we believe is, like I said, that finding that
7 right balance. And there are ways you can protect against
8 fraud. Even if you just want to do a voter impersonation fraud
9 without a potential disenfranchisement impact. And there are
10 models out there. We got real close last session. We were
11 working with Chairman Smith and other members from both parties
12 and we were looking at the Florida model. We were looking at
13 the Michigan model. We got real close to something that I think
14 both sides could agree on. And it was shut down. And,
15 unfortunately, we've come back to this bill. And instead of
16 going back towards that comprising models of Florida and
17 Michigan, this bill is actually taking us the opposite direction
18 and making it more stringent than Indiana, Georgia or any other
19 state. And I'm not really sure that there's a need for that
20 here in Texas.

21 The other thing I point out that with the
22 same-day voter registration, there are ways that we can do that
23 provisionally and we can double check and triple check and
24 quadruple check that the information is accurate and that that
25 person isn't a fraudulent voter. There are safeguard provisions



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1 that's worked in North Carolina, obviously a somewhat
2 conservative state. So there are ways to do it but
3 unfortunately those conversations aren't happening right now,
4 and I hope they will.

5 VICE CHAIRMAN VEASEY: They do same-day voter
6 registration in Minnesota, and for the first time in quite some
7 time I believe they have a Republican majority in their Senate,
8 and they do same-day voter registration there.

9 MR. FIGUEROA: It's workable.

10 VICE CHAIRMAN VEASEY: And I think that that's --
11 you know, you don't want this to turn into a partisan deal
12 because I remember that the first time we were debating this
13 bill someone came up to me on the house floor. They said, Mark,
14 you don't have to worry about this. You're not going to lose
15 your district. Enough voters in your district won't be affected
16 to where you'll lose. So, of course, what I heard was -- you
17 know, the conclusion that I reached was, yeah, you're saying it
18 won't hurt me, but you're also implying that by saying that it
19 maybe will hurt someone else in a more marginal district. That
20 was the implication and the comments that were made to me on the
21 House floor. We don't want to get into that. We don't want
22 anyone to lose the right to vote --

23 MR. FIGUEROA: From our perspective --

24 VICE CHAIRMAN VEASEY: -- just so someone else can
25 win an election. And we don't want anyone to cast a fraudulent



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1 ballot. And I haven't seen any evidence of that going on at
2 all. Just like I said, the only thing I've heard and the only
3 e-mails that I've seen and the e-mail that I talked about
4 earlier is just sort of rumors, innuendo, and nothing concrete.
5 And it's the same rumors and innuendo that have been around
6 since reconstruction. And that's crazy.

7 MR. FIGUEROA: Uh-huh. And we had an expert
8 testimony in the Senate side, Andreas Tijerina, that talked
9 about all the reasons why Texas is a Section 5 state were always
10 presented as a way to address fraud. They always had a reason
11 for it that had nothing to do with potentially disenfranchising
12 voters, although we knew the effect was that it was going to
13 have a disenfranchising effect. So what I was going to say,
14 from our perspective, every one of those provisional ballots
15 that isn't counted because someone doesn't have the proper
16 identification to us a potentially disenfranchised voter and is
17 most likely a disenfranchised voter.

18 When we looked at it in Arizona, those
19 conditional provisional ballots were specifically people who
20 didn't have the identification requirements were people who were
21 citizens and were legitimate voters who just at that moment did
22 not have the identification they needed or the poll worker told
23 them they needed to match something else that it didn't match,
24 the names didn't match exactly right. Those -- and those are
25 potentially disenfranchised voters.



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1 So if you're going to talk about every single
2 vote counts, every single vote matters, it's so important for
3 that one vote, then we need to look at the fact that we have
4 hundreds of provisional ballots that aren't being counted under
5 our current law and imagine how many we're going to have when we
6 started adding restrictions.

7 VICE CHAIRMAN VEASEY: And can you just real
8 quickly, the Indiana law, make some comparisons -- if you can go
9 through it quickly, between the Indiana law and the law that
10 we're trying to -- because one of the things I've heard several
11 times is that this version that is trying to pass now, that is
12 already passed in the Senate that it's the exact same bill as
13 the Indiana law, but others have said no, it's more stringent.
14 So can you clear it up for us.

15 MR. FIGUEROA: From our perspective, we believe
16 that this bill SB14 is more stringent. Indiana allows for a
17 government issued photo ID. It doesn't specifically lay out
18 just four documents that are portrayed in the SB14. It must
19 display the voter's photo, display the voter's name, which must
20 conform to the voter registration, and it allows for an
21 expiration date that is either current or that expired after the
22 last annual election.

23 If a voter cannot provide an ID, a voter may vote
24 provisionally within a week from the election and return with
25 either a valid ID or an affidavit with an acceptable reason for



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1 an ID. So in Texas we have fewer documents. We have a shorter
2 cure period. And we don't have a clear affidavit processes that
3 will allow people to fix their ballot as soon as they arrive, if
4 they have a reasonable reason for not having an ID. And so for
5 those reasons and as well as the fact that a voter -- an elderly
6 voter who doesn't have a birth certificate can also cure their
7 ballot as well in Indiana, and we don't have those same type of
8 mechanisms here. So we do think that our SB14 is more stringent
9 than Indiana.

10 REPRESENTATIVE HARLESS: Mr. Chairman.

11 CHAIRMAN BONNEN: I think Representative Aliseda
12 had his light on for a while.

13 REPRESENTATIVE ALISEDA: You threw out a number
14 there that I want to follow up on. You mentioned 690,000
15 individuals that are registered to vote without any kind of
16 identification.

17 MR. FIGUEROA: They -- so when you register to
18 vote, you mark -- if you have a Texas ID, you put your Texas
19 driver's license number or you put your Social Security number
20 if you don't have a driver's license, and then you mark if you
21 don't have either. And that's what was required under the Help
22 America Vote Act. So we have 690,000 people on the voter rolls
23 that marked that last checkmark that said they did not have
24 driver's license or --

25 REPRESENTATIVE ALISEDA: Those individuals could



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1 be, in fact, individuals that could commit voter fraud.

2 MR. FIGUEROA: And those voters -- so those
3 voters when they registered to vote are checked against the
4 current databases that are required under the Help America Vote
5 Act to ensure that they are who they say they are. So what this
6 bill would do would prevent that voter registration card from
7 being used as an identification. But what it doesn't do is
8 insure that that voter is actually -- this bill doesn't have any
9 impact on that voter getting a voter registration certificate.
10 What this bill does is it says that they're still going to get a
11 voter registration certificate, but now they're going to have to
12 bring something else with them.

13 REPRESENTATIVE ALISEDA: Which is like a lot of
14 laws, an alarm system to -- not necessarily to deter the crime.
15 It's just to cause a little more trouble for someone to go on to
16 the next house.

17 MR. FIGUEROA: Right. And I get that.

18 REPRESENTATIVE ALISEDA: I don't find --
19 actually, I find that number scary, that we have 690,000
20 individuals out there that have gotten a voter registration
21 without any form of identification, without any Social Security
22 number, and they're out there potentially able to vote and we
23 have absolutely no way to keep them from voting.

24 MR. FIGUEROA: So this is required under the Help
25 America Vote Act. So I'm not sure you want to get into the



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1 registration process. And there's certainly some reforms we
2 could make on the registration process. But this is what I
3 would say is I agree with you that there's an alarm system that
4 could be in place, which is why we should do the Michigan and
5 Florida model which says if you don't have those
6 identifications, you can submit an affidavit so that we can
7 verify that these voter is who they say they are. We can verify
8 this person is actually an eligible voter, and then that ballot
9 is counted in Florida and in Michigan.

10 With this current bill, we don't have an alarm
11 system. We have a gate, and they can't get past the gate. And
12 even if they are legitimate voters and they don't have
13 identification, there's no way of getting around the gate. So I
14 say let's set an alarm system. Let's ask them for some more
15 information. Let's make sure they are who they say they are and
16 let's count their ballot.

17 REPRESENTATIVE ALISEDA: The other observation
18 I'd like to make is you claim that there were other sessions
19 where this -- some kind of voter ID law was considered and they
20 were less onerous than the one we have today. And my
21 observation would be, why didn't you take it when it was offered
22 to you earlier?

23 MR. FIGUEROA: Well, we were pretty much in
24 support of some of those compromises and we thought we were
25 there. Now, the proposals that came up last session weren't the



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1 ones that got hearings. They were ones that were talked about.
2 And we actually were in support of Todd Smith's compromise. In
3 fact, we had a hearing with Leo Burman where we talked about the
4 Michigan and Florida process, and it looked like we had an
5 agreement. We came back next session and they went back to the
6 previous version. So we've always been about trying to look at
7 Michigan, Florida, New Mexico as compromises to include a
8 signature affidavit process or include some election-day voter
9 registration with the voter ID requirement so that we can
10 preserve access and security. But, you know, this is a
11 political process and sometimes the compromises don't work out.

12 REPRESENTATIVE ALISEDA: Are you aware that Texas
13 has twelve counties with more registered voters than voting age
14 citizens?

15 MR. FIGUEROA: I did not know that. That's good
16 to know. So more registered counties than --

17 REPRESENTATIVE ALISEDA: Has twelve counties with
18 more registered voters than voting age citizens.

19 MR. FIGUEROA: So we need to fix up our voter
20 registration database. I agree with that. But this bill
21 doesn't fix our voter registration process. This bill only
22 affects it on the poll side. It doesn't fix the problem.

23 CHAIRMAN BONNEN: Thank you. Representative
24 Harless.

25 REPRESENTATIVE HARLESS: Mr. Chairman, I just



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1 wanted to kind of make some clarifications because not everyone
2 was here when we laid out the substitute and some of the
3 differences. We allow for six forms of identification, not just
4 four. And in the committee substitute and the bill that passed
5 in the Senate to engrossment it allowed for expired documents up
6 to 60 days. So if your driver's license or your ID card or your
7 passport or your CHL or your citizenship paper that has ID on it
8 is expired, you have up to 60 days to vote with that.

9 MR. FIGUEROA: That's a little less than the
10 Indiana, which is the previous general election, and a little
11 less than Georgia.

12 REPRESENTATIVE HARLESS: It actually is about the
13 same as Georgia. There's one ID that Georgia allows that we
14 don't, and Georgia has no exemptions to the photo ID
15 requirements. Texas has an exemption for the indigent, for
16 religious objections, for 70 or older on January 1st of 2012,
17 and the disabled under Social Security or 50 percent veterans.

18 Another thing that I wanted to clear up is the
19 numbers that you were quoting about the 690,000, we're going to
20 have an expert from the Secretary of State to discuss those more
21 because some of those may actually have Social Security numbers
22 or IDs associated with them. It's just that they were put in
23 the database prior to the Help America Vote Act in 2006.

24 MR. FIGUEROA: And some of them may have checked
25 it not knowing. So yeah, sure. Some of those people are going



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1 to have identification.

2 REPRESENTATIVE HARLESS: Thank you for your
3 testimony today.

4 MR. FIGUEROA: Thank you. I hope we can have
5 some more conversations.

6 CHAIRMAN BONNEN: Thank you very much.

7 MR. FIGUEROA: Thank you.

8 CHAIRMAN BONNEN: Chair calls Thomas Wheeler, an
9 attorney representing himself as a private individual here to
10 testify neutrally on the committee substitute to Senate Bill 14.
11 And I believe Mr. Wheeler is one of the experts. You will have
12 ten minutes.

13 MR. WHEELER: Yes, Mr. Chairman. Thank you.
14 Mr. Chairman, members of the committee, my name is Tom Wheeler.
15 For the last five years I have been chairman of the bipartisan
16 Indiana election commission, which means that I was chairman of
17 the commission during the implementation of Indiana's photo ID
18 law and the application of that law during the last 2006, '08
19 and '10 elections.

20 What I'd like to do -- and I really am not
21 familiar with the Texas photo ID law because I'm not speaking in
22 favor or against it. What I want to do is talk about our
23 experience. And to begin with, I'd like to tell you why Indiana
24 adopted our photo ID law and the nature that it is. We had
25 three basic reasons. One, our voter registration system was



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1 simply broken.

2 I believe Representative Aliseda indicated that
3 in Texas 12 of your 254 counties have more individuals
4 registered to vote than actually have adult voting age
5 population in those counties. In Indiana it was actually quite
6 a bit worse. We had 19 of our 92 counties had registered voters
7 in excess of the adult members of the population. So our voter
8 registration system was clearly broken.

9 We had 4.3 million registered voters yet a survey
10 of Indiana registered voters indicated that only three million
11 of our voters had registered to vote. So our system was clearly
12 broken. In fact, we had 36,000 documented deceased individuals
13 on our books that could not be purged based on, frankly,
14 partisan bickering between the two parties. So number one,
15 system was broken.

16 Number two, what caused this to take place in
17 2004? We had a massive series of voter fraud in East Chicago
18 Indiana. In fact, what happened, and it came out in a case in
19 front of the Indiana Supreme Court, two democratic mayoral
20 contestants in a primary engaged in so much voter fraud,
21 primarily absentee voter fraud, but so much voter fraud using
22 all of these unregistered or these over registered voters that
23 the Indiana Supreme Court referred to this -- they said they
24 were a deliberate series of actions making it impossible to
25 determine the candidate who received the highest number of legal



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1 votes cast in the election.

2 So we had a series of situations where the system
3 was broken. And it was so broken that we couldn't even tell who
4 had won an election. In addition to that loss -- and what that
5 created for Indiana, it created a substantial loss of confidence
6 in the voters. And that was represented by the fact that we had
7 seen substantial declines of voter turnout and voter confidence
8 in our system. They just didn't have any faith in the system
9 because of the voter registration problems and the rampant fraud
10 that had taken place in East Chicago.

11 When you took those two factors and combined with
12 the need to modernize our election system based upon the
13 requirements of HAVA and the NVRA, the State of Indiana took
14 steps in 2004 to pass their photo ID law.

15 I won't go into detail. There's been a lot of
16 discussion about Indiana's photo ID law. And you're correct.
17 It appears to be slightly more liberal than the current version
18 that has been introduced. Basically, our provision says if it's
19 a government issued ID with a photo and an expiration date and
20 displays the voter's name, then it's okay. And we allow some
21 flexibility in the voter's name. For example, it doesn't have
22 to be the exact name that's on the ID. If your name is Robert
23 John Crew but you go by the name John Crew or J. Crew, it is
24 acceptable under our law. We also have a couple of exemptions.
25 We allow, for example, if a voter is unable to obtain an ID



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1 because they don't want their picture taken or for some other
2 reason they are unable to obtain that ID, they can go and appear
3 in person in front of a county election board, make a verified
4 affidavit indicating why they couldn't have the ID, and they
5 would be permitted to vote or to have their provisional ballot
6 counted.

7 In addition, Indiana provides free IDs. Indiana
8 law and the Secretary of State's office has worked with the
9 office of BMV to keep our BMV branches open, for example, 6:00
10 a.m. to 7:00 p.m. on election day, so if someone's turned away
11 they could go back, frankly, on that day and obtain a photo ID.
12 If not, under our provisional balloting requirement, they have
13 ten days to obtain that provisional ballot.

14 Now, I want to turn in this brief amount of time
15 I've got to our outreach efforts. We took, as has been
16 documented by the Secretary of State from Georgia, we also took
17 substantial efforts to engage in outreach efforts to both the
18 minority communities and the white communities and the Hispanic
19 communities. We ran media buys. We spent \$1.6 million though
20 in 2006 alone.

21 Now as indicated in the question of the Secretary
22 of State from Georgia, we used primarily HAVA money to do that.
23 We used about \$2.1 million in HAVA money. We followed that up
24 with additional media buys of \$550,000 in 2008. But that has
25 tailed off. Why has it tailed off? Frankly, people understand



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1 our photo ID requirement. It's analogous to a situation where
2 when you were going to the airport, the first time you went to
3 the airport without a photo ID, you showed up and no photo ID,
4 you were going to go home.

5 Now people understand that they need to bring
6 their photo ID and people in Indiana understand that. We're not
7 sending people home with provisional ballots. We don't need to
8 spend the money in outreach efforts at that point because people
9 understand that. As ways indicated a little while ago, in
10 Indiana if you want to get into a government building, you have
11 to show photo ID. If you want to cash a check. People in
12 Indiana now understand that. That is part of the extensive
13 voter outreach efforts that we made.

14 Now, the question is what happened in Indiana
15 after we did photo ID? And our experience is a little bit
16 different from Georgia because I can control for what has been
17 referred to in the questioning as the Obama factor. In Indiana
18 we actually had off-year elections. Because we implemented ours
19 in 2004, we had ours in 2006, 2010. We've had two off-year
20 elections that did not involve Barack Obama, did not involve
21 this historic situation that happened in 2008. Indiana in 2008
22 had a similar experience that I'm sure Texas and Georgia. We
23 had a tremendous voter turnout. Let's leave that aside for
24 right now and let's talk about the off-year elections because we
25 can compare 2002, 2006 and 2008.



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1 In 2006, our first year of photo ID, an off-year
2 election, we experienced, in contrast to the decline in voter
3 turnout we experienced about a 4 to 5 percent increase in voter
4 turnout in 2006, an off-year election. This had reversed the
5 steady decline that we had seen over the years. And in 2010 we
6 saw that trend accelerate. We actually experienced another 5
7 percent increase. We had gone from 46 percent in 2002 to 50
8 percent voter turnout in the off-year election in 2006, and we
9 increased that in the 2010 election to 55 percent. So in
10 Indiana our photo ID law has actually -- in my personal belief,
11 my experience it has increased voter turnout. Why? It's
12 returned some value, some integrity to the system, one. But
13 number two, what it has allowed us in Indiana to do is to begin
14 more creative outreach efforts and more access to the polls by
15 voters.

16 I mean, the partisanship of this is that the
17 democrats will come and say we want more access, we need more
18 people to be able to go, we need more places to vote, we need
19 more days to vote, we need extended hours. Well, in Indiana,
20 what photo ID has allowed us to do is for Republicans to come in
21 and say we have a comfort level with that because I know whether
22 you vote on Monday, Tuesday, Wednesday, whether we have
23 satellite voting, whether we have vote centers -- Mitch Daniels,
24 our governor, the first bill he signed this year was a bill in a
25 bipartisan bill to install vote centers in all 92 counties which



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1 is going to be a vast benefit to the manner in which we run
2 elections in Indiana.

3 I know you guys are on the elections committee.
4 Having served as the chairman of the election period for the
5 last five years, the biggest problem we have is staffing
6 precincts and the expense of staffing those precincts. Voting
7 centers allow us to do that. That's Bill No. 1 that Mitch
8 Daniels signed this year, a bipartisan bill.

9 Why were we able to do that? Because Republicans
10 had a level of comfort with increasing access because of photo
11 ID. We knew -- we knew that despite our bloated voter
12 registration roles that the MALDEF representative just
13 mentioned, that apparently you have a similar problem here in
14 Texas, despite those voter registration roles, we knew that if
15 Mickey Mouse was registered to vote in Indiana, Mickey Mouse was
16 going to have to show up with a photo ID with his picture and
17 his name on it. And that became very relevant and important in
18 the 2008 election.

19 I received a call from the Lake County Board.
20 That's where East Chicago is located. Heavily democratic,
21 heavily African-American. ACORN had taken to that -- and this
22 was a democrat calling me. ACORN had come in and engaged in a
23 systemic dump of voter registrations and obviously fraudulent
24 voter registrations. They were Mickey Mouse, George W. Bush,
25 Jimmy John's, which is a sub franchise. They were obviously



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1 fraudulent. The good news in Indiana is, I don't care that much
2 about it. You know why? Because if you registered as Jimmy
3 John's or George W. Bush, you better show up with a photo ID at
4 the poll that says you're George W. Bush. It increased the
5 voters' integrity in the system, despite what we had seen as a
6 fairly systemic attack on our voter registration rolls. That's
7 what photo ID did in Indiana. It brought integrity back to the
8 system. And because of that, I would suggest it increased voter
9 turnout.

10 To answer a question I think Representative
11 Veasey, if I'm pronouncing it correctly, there was a study done
12 -- I see my time is up. May I briefly conclude? One minute?

13 CHAIRMAN BONNEN: I'd prefer you not to.

14 MR. WHEELER: Fair enough.

15 CHAIRMAN BONNEN: Are there any questions,
16 members? Represent Gutierrez.

17 And just so we understand, we're trying to make
18 sure we're very fair about this and every expert gets exactly
19 ten minutes or just barely beyond that.

20 MR. WHEELER: I understand. Thank you.

21 CHAIRMAN BONNEN: Represent Gutierrez has
22 questions.

23 REPRESENTATIVE GUTIERREZ: Thank, Mr. Chairman.

24 You suggested there was an increase in voter
25 turnout in the 2006 and the 2010 elections. But that's just



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1 generally speaking. Did you break it down into Latino and
2 African-American communities?

3 MR. WHEELER: I know in 2006, yes. That was
4 precisely the question I was going to get to. There was a study
5 done by a professor at the University of Missouri, Professor
6 Milio. And I've got this information which I'll share with the
7 committee. But in his report called The Effects of Photographic
8 Identification on Voter Turnout in Indiana County Level
9 Analysis, what he did is he looked at the elections and he
10 looked at between -- he compared 2002 and 2006, the two off-year
11 elections. And let me read you his conclusion. I'd be happy to
12 provide a copy of the report, and I did provide it to my
13 testimony to the Senate I believe in 2009. Quote: "Voter
14 turnout in Indiana increased about 2 percentage points from 2002
15 to 2006." He was using only in-person voter numbers. "However,
16 in counties with greater percentages of minority or poor voters,
17 turnout increased by even more." His concluding statement was,
18 "The only consistent and frequently significant effect of voter
19 ID that I find is a positive effect on turnout in counties with
20 a greater percentage of democratic leaning voters." The
21 conclusion of the study was that photo ID -- turnout was better
22 in those counties, the minority leaning counties. And our --
23 Lake County, for example, Marion County, St. Joseph County. And
24 I would respectfully suggest --

25 REPRESENTATIVE GUTIERREZ: It's a minority



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1 county, though. And I'm not -- I don't want to be argumentative
2 with you, but you're telling me about a minority county. The
3 study is great and I appreciate it. Professor
4 whatever-his-name-is is Latino, if I'm not mistaken. My concern
5 is these numbers are very -- you can get them. Your Secretary
6 of State can get them.

7 MR. WHEELER: Sure.

8 REPRESENTATIVE GUTIERREZ: And so you're saying
9 the State has got the actual numbers of Latino and
10 African-Americans voting?

11 MR. WHEELER: And that's what he relied on in
12 this study. And my point is, the study breaks those out on a
13 county-by-county basis. And what it suggests and I think what
14 it supports the conclusion that if photo ID is designed to
15 suppress democratic voters, it's not working. And we know that
16 in 2008 because for the first time in 45 years we voted for a
17 democrat for president.

18 And in fact, in that 2006 election, the first
19 time photo ID had been implemented we lost -- the republicans
20 lost three house seats to democrats. So photo ID is designed to
21 suppress democratic voters, minority, Hispanic, typical
22 democratic voters, it doesn't work very well, at least not in
23 Indiana.

24 REPRESENTATIVE GUTIERREZ: Perhaps I'm not
25 explaining myself or, as my wife says, maybe I'm not listening.



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1 I choose not to sometimes.

2 MR. WHEELER: That's on the record.

3 REPRESENTATIVE GUTIERREZ: That's on the record.

4 Yeah, I'll be in trouble.

5 I guess you said that in minority communities --
6 minority counties is what you said -- that the numbers
7 increased. That doesn't tell me that Latino voters or
8 African-American voters have increased. All that tells me is
9 that in counties where you have more Latinos and African
10 Americans that voting increased. That doesn't distinguish
11 whether you had more Anglos voting, Latinos, or
12 African-Americans.

13 MR. WHEELER: That's an absolutely fair
14 statement. The study did not break it out in that fashion, but
15 those numbers are freely available, and I'd be happy to provide
16 them to you.

17 REPRESENTATIVE GUTIERREZ: And that's what I'm
18 getting at, because your Secretary of State can pinpoint here's
19 the African-American vote in '04 and '06 and 2010, and so here
20 is the Latino vote. And that's really what I'd like to see,
21 just raw, real numbers rather than some study that tells me, oh,
22 yeah, the numbers went up in a community. Well, in that
23 community I've got Latinos, Asians, African-Americans. I've got
24 Anglos. I mean --

25 MR. WHEELER: True. But on a county-wide basis



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1 is what it shows is with a county-wide basis with large minority
2 communities, the voters -- the amount of voting, the voter
3 turnout is high. I realize it's not broken down. And I'll be
4 happy to provide those numbers.

5 REPRESENTATIVE GUTIERREZ: Well, thank you. I
6 appreciate that. That was really my only question for you. I
7 really appreciate you coming down for us.

8 MR. WHEELER: I was hoping you were going to ask
9 me the Austin question, because I love Austin.

10 REPRESENTATIVE GUTIERREZ: I hope you like the
11 Spurs too.

12 MR. WHEELER: I'm a Pacer fan and we're
13 suffering.

14 CHAIRMAN BONNEN: So you will be able to get us a
15 copy of that report which will have the actual numbers as to
16 what the turnout --

17 MR. WHEELER: Right. And what I'll do, I'll pull
18 it down. I'll go 2002, '4, '6, '8 and '10. I think it will be
19 fairly --

20 CHAIRMAN BONNEN: That would be wonderful.

21 REPRESENTATIVE GUTIERREZ: To be clear, Mr.
22 Chairman, that report doesn't have the numbers. It just simply
23 states that voting went up in these minority communities.

24 MR. WHEELER: No, I'm not going to -- I'll give
25 you Professor Milio's report, which is useful. But what I'll



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1 give you is the raw -- you were asking for the raw numbers. You
2 want to know in Indiana statewide how many African-Americans
3 voted in '2, '4, '6, '8 and '10, how many self-identified
4 Hispanics vote, '2, '4. If it's there, I'll get it for you.

5 REPRESENTATIVE GUTIERREZ: Thank you.

6 CHAIRMAN BONNEN: Representative Harless has
7 questions.

8 REPRESENTATIVE HARLESS: I just wanted to ask one
9 question. You know we've talked a little bit about the
10 provisional ballots here. And in Texas we have a six-days to
11 return for with provisional. Georgia has two. Indiana has ten.
12 Can you talk about that some.

13 MR. WHEELER: Absolutely. And I know we were
14 discussing the dangers of empirical studies, but there was a
15 study in the Journal of Law & Politics that looked at
16 provisional balloting in Indiana. And we know -- they broke out
17 only the 2008 election in this particular study. We do know
18 that there were 2.8 million voters in Indiana. And our numbers
19 look a lot like Georgia's numbers, which is to say that for
20 voter ID provisional balloting, out of that 2.8 million only
21 1,039 provisional ballots were given for photo ID issues, which
22 represents .037 percent of the total individuals voting. Of
23 those -- and our numbers were similar and actually a little
24 lower than Georgia -- only 137 people came back and provided ID.
25 In our situation, as you noted, we have a very, very liberal --



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1 if you don't have the photo ID, you can simply attest that
2 that's you. So we have a very liberal provisional balloting
3 standard.

4 I would suggest to you, in this particular study
5 they argue that one of two things is happening with those other
6 902 people. One, those people are engaged in voter fraud and
7 these are voter fraud people that we've caught because they
8 can't come back and show photo ID. I would suggest -- with all
9 due respect, I would suggest that in reality what happens with
10 the provisional balloting is what the Secretary of the State of
11 Georgia said, which is that provisional balloting, once -- for
12 example, in 2008, Barack Obama -- Indiana was the swing state --
13 won Indiana by 30,000 votes. All right? I think people choose
14 simply not to come back at that point in time because they
15 realized that it didn't make any difference as to whether or not
16 they came back. So I would suggest that they simply chose not
17 to do that. We had 137 people that did, and all those people's
18 provisional ballots were counted.

19 REPRESENTATIVE HARLESS: So you don't think that
20 the additional days of cure increased the number of people that
21 come back, because Georgia numbers he said --

22 MR. WHEELER: Their numbers were a little higher
23 than ours.

24 REPRESENTATIVE HARLESS: They were 1,200 and 308
25 returned, which is about 26 percent. 271 in a provisional



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1 election. 82 returned, which was about 30 percent. Yours is a
2 lot less.

3 MR. WHEELER: 13.7 percent.

4 REPRESENTATIVE HARLESS: So the difference
5 between the two-day and ten-day cure really doesn't matter.

6 MR. WHEELER: Honestly, this is my own personal
7 opinion. I think the longer you go people just --

8 REPRESENTATIVE HARLESS: The less they're
9 likely --

10 MR. WHEELER: Well, there's no challenge. It's
11 over, the vote. Why should I take my time to go do it?

12 REPRESENTATIVE HARLESS: Thank you so much for
13 traveling here.

14 MR. WHEELER: Thank you very much.

15 CHAIRMAN BONNEN: Representative Pena has a
16 question.

17 REPRESENTATIVE PENA: I want to make sure if I
18 could sum up your testimony. You had some voter fraud occurring
19 in your state of -- I consider -- you consider it to be
20 widespread; am I correct?

21 MR. WHEELER: Certainly in East Chicago. East
22 Chicago, the city itself, was declared a corrupt -- under the
23 RICO statute was declared to be a corrupt business enterprise.
24 So it was substantial in the City of East Chicago.

25 REPRESENTATIVE PENA: Okay. And I take it that



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1 much of the fraud you're talking about wasn't necessarily voter
2 impersonation.

3 MR. WHEELER: No.

4 REPRESENTATIVE PENA: But your state found it
5 important, and do you agree that it's important that the
6 instilling of voter confidence in elections is an important
7 state function?

8 MR. WHEELER: Not only we did. The Supreme Court
9 did in our case. I was a defendant in our case, the Crawford
10 case. The Supreme Court said that is part of a valid basis for
11 photo ID. It's one of the three factors that they looked at.
12 Absolutely. Supreme Court said that.

13 REPRESENTATIVE PENA: Okay. So if we have
14 evidence or at least testimony from other individuals that there
15 is voter fraud in fact occurring, not necessarily voter
16 impersonation, is that something that Texas would have a
17 legitimate right to address because --

18 MR. WHEELER: Absolutely.

19 REPRESENTATIVE PENA: Because the citizens are
20 calling for it.

21 MR. WHEELER: And the Supreme Court has said you
22 do. Absolutely.

23 REPRESENTATIVE PENA: Very good. Thank you.

24 MR. WHEELER: Thank you.

25 CHAIRMAN BONNEN: Representative Veasey has



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1 questions.

2 VICE CHAIRMAN VEASEY: And Representative Pena
3 touched on what I wanted to ask you because, you know, at the
4 beginning of your testimony, I was in the back listening, and
5 you had talked about the voter fraud that had taken place. I
6 don't think you used the word voter impersonation. But can you
7 elaborate for me exactly what type of voter fraud was taking
8 place and what type of convictions did you get out of it. And
9 where is East Chicago?

10 MR. WHEELER: It's east of Chicago. It's Lake
11 County. It's immediately adjacent to Chicago, Lake County.

12 VICE CHAIRMAN VEASEY: So on Lake Gary?

13 MR. WHEELER: Gary is in Lake County as is East
14 Chicago. So they're adjacent to each other. There was a movie
15 called The King of Steel Town. If you've ever seen it, I
16 recommend it to you. It shows systemic voter fraud. The big
17 thing they did was sidewalks for votes. They bought votes by
18 paving people's sidewalks, using public employees to pave
19 people's sidewalks. The entire administration was indicted and
20 almost all of them have been convicted of fraud and are serving
21 time in federal penitentiaries for this. So when we talk about
22 fraud, there's purchasing of votes, absentee ballot fraud, the
23 whole gamut of fraud.

24 The key factor for us in Indiana was that
25 widespread corruption -- not only was there widespread



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1 corruption, but the mayor, or Mayor Pastrick bragging in a movie
2 about how corrupt and how he had used political influence to
3 purchase votes frankly disgusted people in the State of Indiana
4 with the entire system. They lost confidence. And photo ID, I
5 would submit to this committee, has brought that confidence back
6 to the State of Indiana. And, as I respond to Representative
7 Pena's question, the Supreme Court found that that was a
8 legitimate reason for the government to enact the legislation
9 against an equal protection challenge.

10 VICE CHAIRMAN VEASEY: But in relation to the law
11 that we're trying to pass, if you -- you know, if you're buying
12 votes for patronage, the people that are voting, that have those
13 jobs, that patronage, they're not necessarily committing voter
14 impersonation. They may be voting because they think that this
15 is the person that is going to protect their jobs, which would
16 be illegal, but it is different than what we're discussing
17 today.

18 MR. WHEELER: You're absolutely right.

19 VICE CHAIRMAN VEASEY: It's completely different.

20 MR. WHEELER: Right. And this wouldn't address
21 that at all. But what the bill -- I would suggest to you that
22 our photo ID bill did is, we had a crisis of confidence in our
23 election system. And photo ID, I think the turnout shows, the
24 increase in turnout, photo ID in Indiana has resolved that
25 crisis of confidence, not only resolved it, but allowed us and



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1 people on the Republican side to reach out and embrace ideas
2 that years ago they would not have embraced that allow more
3 voter turnout. And I think with what governor Daniels signed --
4 we're a partisan state. The democrats in our rep -- are in
5 Illinois right now. Within that -- they broke -- we have a
6 break. I know you had it with redistricting. They've left. We
7 are not currently a bipartisan state. This is an issue we were
8 bipartisan on. And that's what's the cool thing. And photo ID
9 allows you to do that, allows you to reach across and for
10 Republicans to have a comfort level to allow for different types
11 of voting and methodologies that you wouldn't have without photo
12 ID, at least that's what we've experienced in Indiana.

13 CHAIRMAN BONNEN: Let me ask you this. And I
14 think we're wrapping up. I hope we are. So you're -- I want to
15 make sure I understand your belief here -- is that by passing
16 voter ID you increased the voter turnout which reduced the
17 significant impact that voter manipulation through patronage and
18 other things could have upon an election?

19 MR. WHEELER: That would be true.

20 CHAIRMAN BONNEN: Okay. Thank you very much.
21 Appreciate your being here.

22 (Transcript resumed in Volume II of II)
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160

1 I, Amy C. Kofron, Certified Shorthand Reporter in
2 and for the State of Texas, hereby certify to the following:

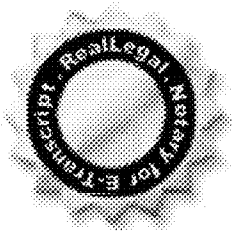
3 That the CD entitled, "Texas House of Representatives
4 82nd Legislature, Select Committee on Voter Identification and
5 Voter Fraud, March 1, 2011" was transcribed at the request of
6 Anne Wilson, Attorney General's Office, Austin, Texas 78701, and
7 The amount due is \$_____.

8 That the aforementioned CD was transcribed to the best
9 of my ability to hear and understand the CD;

10 That the transcript was submitted by E-trans on April
11 12, 2012, to Anne Wilson, Attorney Generals' Office, 209 West
12 14th Street, Austin, Texas 78701;

13 I further certify that I am neither counsel for,
14 related to, nor employed by any of the parties or attorneys in
15 the action in which this proceeding was taken, and further that
16 I am not financially or otherwise interested in the outcome of
17 the action.

18 Certified to by me, this 12th day of April, 2012.



Amy Kofron
Amy C. Kofron, Texas CSR No. 6352
Expiration Date 12/31/13

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